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**IN THE
COURT OF APPEALS OF INDIANA**

GREGORY C. RAGLAND,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee.

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No. 48A02-0604-CR-307

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-9412-CF-224

January 22, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Gregory Ragland, challenges the trial court's revocation of his probation and its order that he serve the remainder of his suspended sentence with the Department of Correction.

We affirm.

On June 26, 1995, Ragland pleaded guilty to two counts of dealing in cocaine, as Class B felonies. On August 15, 1995, Ragland was sentenced to fifteen years executed on each count with the sentences to be served consecutively. Ragland filed a petition to modify his sentence on December 8, 1999, which the trial court denied on April 21, 2003. Ragland filed a second motion for modification of his sentence on May 24, 2004. Following a hearing on June 28, 2004, the trial court modified Ragland's sentence by placing him on work release. On January 24, 2005, pursuant to an agreement with the State, Ragland was released from work release and placed on formal probation for the balance of his sentence. Conditions of Ragland's probation included, among others, that he not use alcoholic beverages, that he refrain from possessing a firearm, and that he not commit another criminal offense, either felony or misdemeanor.

On May 16, 2005, the State filed a petition for violation of probation alleging that Ragland committed the offenses of battery and operating a vehicle while intoxicated on or about May 15, 2005. The State filed an amended petition on August 30, 2005 alleging that on or about August 30, 2005, Ragland committed the offense of operating while intoxicated. The State filed a second amended petition on November 7, 2005 alleging that Ragland committed the offenses of battery, possession of a firearm after felony convictions, and resisting law enforcement on or about October 22, 2005. A third

amended petition for probation violation, filed November 10, 2005, alleged that Ragland had been arrested on or about October 29, 2005 for invasion of privacy.

At an evidentiary hearing held on August 22, 2005 on the first petition for probation violation, Ragland admitted to operating a vehicle while intoxicated but denied committing the battery offense. At a second evidentiary hearing held on December 8, 2005, the trial court found that Ragland committed all of the violations alleged in the various petitions, except for the invasion of privacy. The trial court therefore revoked Ragland's probation and ordered that he serve the remainder of his sentence at the Department of Correction. Ragland now appeals.

Upon appeal, Ragland argues that the trial court abused its discretion in ordering that he serve the remainder of his suspended sentence with the Department of Correction.¹ Specifically, Ragland argues that "It is an abuse of discretion [to] revoke the probation of a defendant who has an alcohol problem and unable to stop drinking." Appellant's Brief at 5. Ragland further contends that a "one strike and you are back in prison philosophy is overly punitive and does nothing to give the offenders the assistance they need to reintegrate into society." Appellant's Brief at 10. Ragland asserts that a more appropriate sanction would have been for the trial court to return him to work release as he requested.

"Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment." Brabandt v.

¹ Ragland does not challenge the sufficiency of the evidence supporting the trial court's revocation of his probation.

State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003) (citing Bonner v. State, 776 N.E.2d 1244, 1247 (Ind. Ct. App. 2002)). Placement in a probation program is a “matter of grace” and “a conditional liberty that is a favor, not a right.” Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999), cited in Brabandt, 797 N.E.2d at 860. Upon finding that a probationer has violated a condition of probation, a court may either (1) continue the person on probation, with or without modifying or enlarging the conditions; (2) extend the person’s probationary period for not more than one year beyond the original probationary period; and (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3 (Burns Code Supp. 2006);² Brabandt, 797 N.E.2d at 860. We will review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. Sanders v. State, 825 N.E.2d 952, 957 (Ind. Ct. App. 2005), trans. denied.

At the revocation hearing on December 8, 2005, Ragland admitted to operating a vehicle while intoxicated on the two occasions alleged in the third amended petition for violation of probation. The State then presented evidence as to the remaining alleged probation violations. The record reveals that Anita Woods and Ragland were involved in a romantic relationship, but that Anita was in the process of breaking up with Ragland. On or about May 15, 2005, Anita and her daughter went to the Oasis Tavern in Anderson, where they encountered Ragland. Upon leaving the tavern, Ragland followed Anita and her daughter to their car, where he proceeded to get in the back seat without Anita’s

² The statute was amended effective July 1, 2005, to permit the court to order less than all of the originally suspended sentence to be served.

permission. Anita told Ragland to get out of the car and repeatedly told him that she did not want to be bothered by him, but Ragland was adamant about staying in the car. According to both Anita and her daughter, Ragland called Anita a “bitch” and began hitting Anita in the head and the face with his fists.

On October 22, 2005, Anita ran into Ragland at another tavern in Anderson. After leaving that tavern, Anita received a call from Ragland and agreed to meet him in a parking lot. When Ragland got into Anita’s car, Anita felt Ragland’s side and discovered a handgun. Anita then ordered him to get out of her vehicle with the gun. Ragland first threw the gun in the back seat of Anita’s car but later removed it and placed it in his truck. As Anita and Ragland were driving around, an argument erupted and Ragland began “ranting and raving” and cursing at Anita. Ragland then removed the key from the ignition, bringing the vehicle to a stop. Ragland later replaced the key and asked Anita to take him back to his vehicle. After Anita started driving, Ragland started beating her in the face. Ragland continued beating Anita about the face after she managed to stop the vehicle and get out. Anita’s daughter drove her to the police station, where she gave a statement and was eventually transported by ambulance to the hospital. Anita suffered swelling about her face and a fractured nose. In investigating Anita’s claim that Ragland had a handgun, a police officer located Ragland’s truck and recovered a 9 mm handgun from the driver’s seat. Next to the handgun was a wallet containing photo identification of Ragland.

After receiving this evidence, the trial court found by a preponderance of the evidence that, except for the invasion of privacy allegation, Ragland committed the

offenses as alleged, and therefore violated his probation. Further, Ragland admitted to the two operating while intoxicated offenses. During the sanction phase of the hearing, Ragland admitted that he has a problem with drinking and that each of the events underlying the probation violations involved drinking. Based upon his good record while in the work release program, Ragland then requested that he be returned to that program or placed on in-home detention with a stipulation that he receive treatment for alcoholism.

In deciding what sanction to impose, the trial court noted that Ragland had success while incarcerated and while in the work release program. While noting that Ragland had ten prior felony convictions, the court acknowledged that it agreed to give Ragland “a break” by modifying his sentence to be served on work release because “it appeared that [Ragland] changed [his] life.” Transcript at 95. The court then stated that the instant revocation proceedings revealed that Ragland had reverted “to being the old Greg Ragland doing what you’re going to do and the hell with the law.” Transcript at 95. Indeed, it was less than four months after his removal from a supervised environment that Ragland committed the offenses which led to the first petition for probation violation. In explaining the sanction, the court reiterated that Ragland had ten prior felony convictions and noted that the instant revocation proceedings involved two instances of battery, Ragland’s possession of a handgun, and two instances of operating while intoxicated, which the court noted posed a risk to the lives of others. Thus, contrary to Ragland’s

claim, the trial court did not revoke his probation because he consumed alcohol.³ Rather, the trial court revoked Ragland's probation upon the basis of his new offenses.

Ragland's reliance upon Sweeney v. United States, 353 F.2d 10 (7th Cir. 1965) in arguing that he had no control over his actions because of his drinking is misplaced. In Sweeney, the court noted that the district court was aware of the petitioner's history of chronic alcoholism. Id. at 11. Here, there is nothing in the record which indicates that Ragland has been diagnosed with alcoholism or that he has abused alcohol in the past. The record shows only that alcohol may have played a part in the events giving rise to the instant probation violations. The trial court addressed Ragland's use of alcohol, noting that Ragland made the choices which led to the instant action. Based upon the foregoing, we cannot conclude that the trial court abused its discretion in ordering Ragland to serve the remainder of his sentence with the Department of Correction.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.

³ As noted above, a condition of Ragland's probation was that he refrain from consuming alcoholic beverages. Ragland's consumption of alcohol, other than as it pertained to the operating while intoxicated offenses to which Ragland admitted, was not alleged as a separate basis for probation violation.